

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHAWN ANN WHITE,

Defendant.

No. 2:21-cr-00048 WBS CSK

FINDINGS AND RECOMMENDATIONS

Pending before the Court are defendant's objections to the writ of garnishment and request for a hearing. (ECF No. 4.) For the following reasons, this Court recommends that defendant's objections to the writ of garnishment be overruled and that defendant's request for a hearing be denied.

I. BACKGROUND

On or around September 16, 2016, in the United States District Court for the Southern District of Mississippi, defendant pled guilty to one count of Conspiracy to Commit Identity Theft and Theft of Government Funds.¹ (United States v. White, No. 1:15-cr-00055 (S.D. Miss.), ECF No. 238.) In an amended judgment filed February 2, 2017, in addition to incarceration and a

¹ This Court takes judicial notice of the record of defendant's criminal case in the United States District Court for the Southern District of Mississippi, Case No. 1:15-cr-00055-LG-RHW-3 (S.D. Miss.). See Fed. R. Evid. 201; Harris v. County of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012) (court may take judicial notice of documents on file in federal courts)

1 period of supervised release, the court ordered defendant to pay \$90,747.91 in restitution.

2 (United States v. White, No. 1:15-cr-00055 (S.D. Miss.), ECF No. 276.)

3 On March 11, 2021, supervised release of defendant was transferred to the United States
4 District Court for the Eastern District of California. (United States v. White, No. 1:15-cr-00055
5 (S.D. Miss.), ECF No. 323.)

6 On September 11, 2024, in the Southern District of Mississippi, the United States filed an
7 application for a writ of garnishment seeking to garnish 25% of defendant's non-exempt
8 disposable income from defendant's employer, Western Dental Services, Inc. (United States v.
9 White, No. 1:15-cr-00055 (S.D. Miss.), ECF No. 335.) On September 11, 2024, the Clerk of the
10 Court for the Southern District of Mississippi issued the Writ of Garnishment. (United States v.
11 White, No. 1:15-cr-00055 (S.D. Miss.), ECF No. 336.) In the Clerk's Notice issued with the Writ
12 of Garnishment, the Clerk advised defendant that the United States sought the balance owed of
13 her restitution, \$83,532.75. (United States v. White, No. 1:15-cr-00055 (S.D. Miss.), ECF No.
14 337.) The Clerk's Notice further advised defendant that if she requested a hearing pursuant to
15 28 U.S.C. 3202(d), she must notify the court within twenty days of the notice. (Id.) The Clerk's
16 Notice further advised that if the current action is a garnishment under 28 U.S.C. § 3205,
17 defendant may also file objections pursuant to 28 U.S.C. 3205(c) within twenty days after the
18 garnishee filed an answer. (Id.)

19 On October 3, 2024, in the Southern District of Mississippi, defendant filed objections to
20 the application for writ of garnishment and a request for a hearing. (United States v. White, No.
21 1:15-cr-00055 (S.D. Miss.), ECF No. 339.) Defendant also requested that this action be
22 transferred to a district court in California where defendant now resides. (Id.) On October 3,
23 2024, in the Southern District of Mississippi, the United States filed a response to defendant's
24 objections, joining the request for a transfer of jurisdiction of its application for a writ of
25 garnishment to the Eastern District of California. (United States v. White, No. 1:15-cr-00055
26 (S.D. Miss.), ECF No. 340.) On October 8, 2024, the District Court for the Southern District of
27 Mississippi granted defendant's motion to transfer and transferred the United States's application
28 for a writ of garnishment to the Eastern District of California, including movant's objections and

1 request for a hearing. (United States v. White, No. 1:15-cr-00055 (S.D. Miss.), ECF No. 341.)

2 On October 15, 2024, the garnishee, Western Dental Service Inc., filed an answer in the
3 Southern District of Mississippi. (United States v. White, No. 1:15-cr-00055 (S.D. Miss.), ECF
4 No. 343.)

5 On November 1, 2024, in the Eastern District of California, the United States filed an
6 opposition to defendant's pending objections and request for a hearing. (ECF No. 7.)

7 **II. LAW REGARDING ENFORCEMENT OF RESTITUTION ORDERS**

8 Orders for restitution may be enforced by the United States in the same manner as the
9 enforcement of fines or "by all other available and reasonable means." 18 U.S.C.
10 § 3664(m)(1)(A)(i)-(ii); see United States v. Novak, 476 F.3d 1041, 1044 (9th Cir. 2007) (en
11 banc) ("The government is responsible for enforcing restitution orders and turning the funds
12 collected over to victims."). "One available procedure is a writ of garnishment against a
13 judgment debtor's property." United States v. Zinnel, 2021 WL 3513808, at *1 (E.D. Cal. Aug.
14 10, 2021), findings and recommendations adopted, 2021 WL 4777105 (E.D. Cal. Oct. 13, 2021).

15 The Federal Debt Collection Practices Act ("FDCPA") "sets forth the 'exclusive civil
16 procedures for the United States ... to recover a judgment on ... an amount that is owing to the
17 United States on account of ... restitution.'" United States v. Mays, 430 F.3d 963, 965 (9th Cir.
18 2005) (quoting 28 U.S.C. §§ 3001(a)(1), 3002(3)(B) (alterations in original)). "The Mandatory
19 Victim Restitution Act ("MVRA"), 18 U.S.C. § 3663(a), allows the United States to collect on a
20 restitution judgment using the procedures available for the collection of criminal fines outlined in
21 18 U.S.C. § 3613(a), see 18 U.S.C. §§ 3613(f) and 3664(m); it 'may enforce a judgment imposing
22 a fine in accordance with the practices and procedures for the enforcement of a civil judgment
23 under Federal law or State law [.]'" Zinnel, 2021 WL 3513808, at *1 (quoting United States v.
24 Berger, 574 F.3d 1202, 1204 (9th Cir. 2009) (quoting 18 U.S.C. § 3613(a))).

25 Under the FDCPA, the United States is required to provide the judgment debtor with
26 notice of the commencement of garnishment proceedings. 28 U.S.C. § 3202(b)-(c). The
27 judgment debtor has twenty days after receipt of the notice to request a hearing, at which the
28 judgment debtor may move to quash any order granting the garnishment. 28 U.S.C. § 3202(d). If

1 a garnishment hearing is held, it is limited to the issues of: “(1) the probable validity of any claim
 2 of exemption by the judgment debtor;” (2) “compliance with any statutory requirement for the
 3 issuance of the postjudgment remedy granted; and (3) if the judgment is by default and only to the
 4 extent that the Constitution or another law of the United States provides a right to a hearing on the
 5 issue, to—(A) the probable validity of the claim for the debt which is merged in the judgment;
 6 and (B) the existence of good cause for setting aside such judgment.” 28 U.S.C. § 3202(d).

7 “Although the Act states that the court ‘shall hold a hearing’ at the debtor’s request, courts
 8 have denied a hearing where the debtor did not object based on one of the issues specified in
 9 28 U.S.C. § 3202(d), where the objection is plainly without merit, or where the objection was
 10 simply a matter of statutory interpretation.” United States v. Bruneau, 2013 WL 6409518, at *3
 11 (D. Ariz. Oct. 23, 2013), findings and recommendation adopted as modified on other grounds,
 12 2013 WL 6409486 (D. Ariz. Dec. 9, 2013) (quoting United States v. Miller, 588 F. Supp. 2d 789,
 13 798 (W.D. Mich. 2008)).

14 **III. DISCUSSION**

15 In her objections, defendant objects to the writ of garnishment pursuant to
 16 28 U.S.C. § 3205(c)(5). (ECF No. 4 at 1.) Section 3205(c)(5) provides that within 20 days after
 17 receipt of the answer from the garnishee, the judgment debtor or the United States may file a
 18 written objection to the answer and request a hearing. As noted by the United States in the
 19 opposition, defendant cannot be objecting to the garnishee’s answer because the answer was filed
 20 on October 15, 2024, after defendant filed her objections and request for a hearing on October 3,
 21 2024. Accordingly, the United States correctly construes defendant’s objections and request for a
 22 hearing as having been brought pursuant to 28 U.S.C. § 3202(d).

23 Defendant first objects to the writ of garnishment on the grounds that, based on
 24 conversations with her parole officer, defendant believed that her financial obligations under the
 25 order for restitution terminated upon her discharge from parole. (ECF No. 4 at 3.) As observed
 26 by the United States in the opposition, the liability for fines and restitution terminates 20 years
 27 after the entry of the judgment or 20 years after release from imprisonment, whichever is later.
 28

1 See 18 U.S.C. § 3613(b). Defendant was released from prison on December 18, 2018.²

2 Therefore, defendant's claim that her obligation to pay restitution has ended is without merit.

3 Defendant next objects to the writ of garnishment on the grounds of financial hardship.
4 (ECF No. 4 at 3.) Defendant's claim of financial hardship is not cognizable grounds for relief
5 from a garnishment action. See United States v Thede, 2020 WL 1952595, at *1 (D. Ariz. Apr.
6 23, 2020) (financial hardship is not a permissible defense to garnishment specified in Section
7 3202(d)); United States v. Taylor, 2015 WL 128160, at *2 (E.D. Cal. Jan. 8, 2015) ("[N]either
8 economic distress nor the failure of the government to institute a payment schedule that is
9 convenient for Defendant are cognizable grounds for relief from a garnishment action."); United
10 States v. Bullock, 2011 WL 486233, at *2 (W.D. N.C. Feb. 7, 2011) ("What defendants may not
11 contest [under § 3202(d)] is their claimed inability to afford the amount of garnishment.")
12 (citations omitted).

13 In her objections, defendant also fails to object to the writ of garnishment on any of the
14 issues identified in 28 U.S.C. § 3202(d). Defendant does not identify any exemption she claims is
15 applicable. See 28 U.S.C. § 3202(d)(1). Defendant does not claim that the United States failed to
16 comply with the statutory requirements for the issuance of the writ. See 28 U.S.C. § 3202(d)(2).
17 The criminal restitution judgment against defendant was not issued by default. See
18 28 U.S.C. 3202(d)(3). Accordingly, defendant is not entitled to a hearing under 28 U.S.C. § 3202
19 because she fails to allege any of the statutory requirements that would entitle her to a hearing.
20 See Taylor, 2015 WL 128160, at *2 (the bases upon which a person subject to garnishment may
21 object are limited to issues identified in 28 U.S.C. § 3202(d)); Bruneau, 2013 WL 6409518, at *3
22 (scope of any garnishment hearing is limited to issues specified in 28 U.S.C. § 3202(d)); United
23 States v. Atkins, 2016 WL 7240594, at *2 (N.D. Tex. Nov. 4, 2016) (denying request for hearing
24 pursuant to 28 U.S.C. § 3202 where defendant failed to allege any of the statutory requirements
25 that would entitle him to a hearing).

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28 ² See Federal Bureau of Prisons Inmate Locator,
https://www.bop.gov/mobile/find_inmate/byname.

IV. CONCLUSION

Accordingly, IT IS HEREBY RECOMMENDED that defendant's objections to the writ of garnishment be overruled and that defendant's request for a hearing (ECF No. 4) be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 12, 2024



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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